IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 377 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

THE STATE OF GUJARAT - Appellant
Versus
ABDULGANI ABDULREHMAN VAKTAPURIYA & 2 - Respondents

==========

Appearance :
MR. M.A. PATEL, LD. APP for Appellant:
Ms. AMI PATEL FOR MR JV JAPEE for Respondents : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 13/11/2006

ORAL JUDGMENT

1. The Appellant State of Gujarat has preferred this appeal under Section 378 of Criminal Procedure Code, 1973 (hereinafter referred to as

the 'Code') challenging the acquittal order dated 25/1/1996 passed by learned Chief Judicial Magistrate, Himatnagar, in Criminal Case No. 1856 of 1992, acquitting the respondents / original accused of the charges under Section 7(1) and 7 (5) and Section 16 (1) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as “PFA Act”). This Court (Coram: M.R. Calla, J) vide order dated 20/8/1996 granted leave and admitted the appeal. Same is taken up for hearing today.

2. The case of the prosecution deserves to be set out in brief as under.

2.1 The original complainant / Food Inspector on 28/4/1992 at 12.00 noon along with his helper visited the premises of the accused no.3 known as “A-One Masala” at Himatnagar in presence of panch witness. The complainant after introducing himself as Food Inspector, purchased 600 grams of chilly powder from the open gunny bag, after notifying his intention to send the same for analysis to the Public Analyst. The food inspector paid an amount of Rs.33=00 towards the cost of the chilly powder purchased, for which cash memo was also received. The notice in form No. 6 under Rule 12 came to be issued which was countersigned by the accused no. 1 present in the shop. The chilly powder was initially collected in a

clean piece of paper. After its weighment it was put into three glass bottles in equal part of 200 grams each. The bottles were thereafter properly sealed and affixed with label as prescribed under the law. The three sample bottles were duly sealed with the seal of Local Health Authority. The entire procedure was done under the supervision of the food inspector, by his helper. One sample out of the three samples was sent to the Public Analyst for the purpose of examination and specimen copy of seal was sent separately as it is stated. The Public Analyst has in its report dated 21/5/1992 opined that as non volatile ether extract which ought to have been 12 % was found to be only 10.65 % in the sample and therefore the sample chilly powder was not in conformity with the standards prescribed in PFA Rules and therefore sample was found to be adulterated. Based on this report appropriate sanction for lodging the complaint was obtained from competent authority and the complaint came to be lodged. After lodging complaint, notice under section 13(2) of the Act came to be issued. The competent court framed charge at exhibit-42. The accused plea of denial was recorded at exhibit-33 and the trial begun. The further statement of the accused under section 313 was taken wherein they denied the case of the prosecution. The trial court has analysed the

material on record and come to the conclusion that the accused deserved to be acquitted of the charge under section 16 (1) f the Code vide its order dated 25/1/1996. The same is under challenge in the present appeal.

3. Shri. Patel, learned APP has vehemently urged that the order of acquittal, being erroneous in law, deserves to be quashed and set aside. The trial court ought not to have acquitted the accused when there was clear finding recorded by Public Analyst in the report that sample chilly powder was found to be deficient in its content. The none supporting of the case by panch witness ought not to have rendered the prosecution case so weak so as to acquit the accused. The procedure carried out by the food inspector complainant with the help of his helper could not have been considered so improper as to vitiate the procedure for collecting the sample. Shri. Patel has submitted that the records & proceedings show that the mandatory provisions of PFA Rules have been duly complied with for collecting sample and therefore, the order in judgment of the trial court deserves to be quashed and set aside and as the sample food article was found to be deficient and not in conformity with the standards prescribed by the PFA Act the accused deserved to be convicted and inflicted with appropriate punishment prescribed under the law.

4. On appreciation of records & proceedings and depositions in its proper perspective, the followings emerge:-

(i)The sample in question was collected on 28/4/1992,

(ii)The sample in question was collected and packed by helper under direct supervision of the complainant food inspector,

(iii)The sealing procedure also appears to be done by the helper under the direct supervision of the complainant food inspector,

(iv)The complainant food inspector has admitted in his deposition that the process was carried out by the helper under his direct supervision,

(v)Complainant Food Inspector has also admitted in his deposition that the bottles were not cleaned at the place where the samples were collected.

(vi)Complainant food inspector has admitted in his deposition that the bottles for collecting samples were cleaned by his

helper at the office premises only. Neither the complainant food inspector himself nor his helper has categorically stated in their examination-in-chief as to when the bottles in question in present case were cleaned.

(vii)The helper has admitted that he was not trained in collecting sample nor has he trained in packing the same.

(viii)Complainant food inspector has admitted in his deposition that in the shop he had seen chilly powder bing sold in small packets under the seal and title of 'A-One Masala' meaning thereby chilly powder which was taken from the open gunny bag was not actually ready for sale. This suggestion was made and the same has been denied by the food inspector.

(ix)Complainant food inspector has admitted that ordinarily the life of chilly powder would end on passing of period of six months from the date of its packing. In the instant case the sample of chilly powder from open gunny bag collected on 28/4/1994. It deserves to be noted that the food article was examined and analysed only on 12/5/1992. The deficiency found is that of non violative ether extract which ought to have been 12 % and which was actually found to be

of 10.65 %. Thus the marginal deficiency found can not be clearly attributed to any voluntary act of making the powder deficient. The possibility of it being deficient due to passage of time can also not be ruled out.

5. The food inspector has admitted in his deposition that the notices under section 13 (2) of PFA Act though were issued, acknowledgment due cards bearing signature of the accused could not be produced on record. In absence of such vital document the case of the prosecution can not be believed that notices were served upon the accused. The service of notice under section 13 (2) along with report of the Public Analyst to the accused is mandatory provisions which is required to be proved beyond reasonable doubt. In the instant case the admission of the food inspector that the acknowledgment receipt bearing signature of the accused have not been produced on record in itself would go long way to cast doubt in respect of its service upon the accused.

6. More over it also deserved to be noted that the notice under section 13 (2) were issued on 5/9/1992 and the first date in the court was on 6/10/1992. There is a suggestion that the notice was sought to be issued only after the expiry of food sample article. This suggestion though

denied deserves to be appreciated in its proper perspective as it is stated herein above there is admission of complainant food inspector himself that the food article which was being sold in packets had only six months life time. In the instant case it deserved to be noted that the food article was collected on 28/4/1992 and notice was issued under section 13 (2) of the Act on 5/9/1992. Presuming for examining the plea of the prosecution that notices issued under section 13 (2) were duly served, then also a question would arise whether the notices were issued in time so as to enable the accused to avail the opportunity of having the sample tested by Central Food Laboratory.

7. The mandatory provision under Rule 4 of the Rules about leading necessary proof for establishing due compliance with Rule 14 is also not coming forward very cogently. Time and again this Court has held that it is the duty cast upon the prosecution to establish beyond doubt due compliance with mandatory provisions of Rule 14 of the PFA Rules.

8. This Court has time and again held that mandatory provisions of Rule 14 of the Rules is required to be complied with. The compliance of Rule 14 of the Rules is required to be established by the prosecution for bringing home the guilt on the part of the accused. In the

judgment in case of STATE OF GUJARAT Vs. BHUPENDRA M. MEHTA, reported in 1999 (1) GLH pg. 227, it has been observed that the duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the Court by leading evidence that the bottles used were clean and dry. Para 9 and 9.1 of the judgment in case of State of Gujarat vs. Bhupendra M. Mehta (supra), is set out as under :-

“Para-9: Mr. Vora submitted that the specific question was put about the cleaning of the bottles, but there is no answer by the witness and what is stated is that the bottles were lying in his custody for eight days. Therefore, the bottles were cleaned or not, is not established by the prosecution. He further submitted that the Food Inspector has not stated that he himself has cleaned it or under his supervision, the bottles were cleaned and thereafter, the bottles were properly kept. It is required to be noted that the duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the Court by leading evidence at the Trial Court that the bottles used were clean and dry. In case of M.B. RISALDAR Vs. RADHESHYAM, reported in 21 (2) GLR 136, this Court has

observed as under:

"Even I feel that when a witness testified to the effect that the glass bottles were cleaned and dried, a mere visual appearance to the naked eye may not be sufficient sometimes. If no question might have been put to him as to how he can say that the glass bottles were cleaned and dried, probably the matter would have ended there. But he has given out that the peon had cleaned and dried the bottles and put them into the cupboard. In this state of the evidence, it was the duty of the prosecution to examine that peon to show that bottles were properly cleaned and dried and they were put into the cupboard and properly closed. "

9.1 In the instant case, if in the evidence the words would have been to the effect that the bottles were cleaned before eight days, and were kept in the cupboard, the Court would not have any hesitation in accepting the same, but as the sentence is not correctly written, it is difficult to say whether it refers to 'purchasing' or 'clearing' of the bottles. Therefore also, the benefit should go to the accused.

In the result, the appeal is dismissed. "

9. This Court has perused records & proceedings

and heard the counsels at length. This being an acquittal appeal this Court need not interfere with the order of acquittal unless & until it is patently demonstrated by the appellant that the order of acquittal is so perverse as to resulting into miscarriage of justice. In absence of such plea the order of acquittal deserved to be upheld and confirmed even if it is required to be confirmed on the grounds which are independent of the grounds of acquittal considered by the trial court.

10. As it is stated herein above, the prosecution can not be said to have been established beyond reasonable doubt due compliance with Rule 14 of the PFA Rules.

11. In view of these facts & circumstances, the order of acquittal dated 25/1/1996 passed by learned Chief Judicial Magistrate, Himatnagar in Criminal Case No. 1856 of 1992 does not call for any interference. The appeal, therefore, deserves to be dismissed and is accordingly dismissed.

[S.R. BRAHMBHATT, J]

/vgn